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|---|-------------|----------------------|---------------------|------------------|
| 10/815,469  | 03/31/2004  | William Hatcher      | 07-328-JB           | 6384             |
| 31718   | 7590        | 07/13/2009           | EXAMINER            |                  |
| BELASCO, JACOBS & TOWNSLEY LLP<br>HOWARD HUGHES CENTER<br>6701 CENTER DRIVE WEST<br>14th Floor<br>LOS ANGELES, CA 90045 |             |                      |                     | UTAMA, ROBERT J  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 3715  |             |                      |                     |                  |
| NOTIFICATION DATE   |             |                      | DELIVERY MODE       |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/815,469             | HATCHER ET AL.      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | ROBERT J. UTAMA        | 3715                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 April 2009.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,5-11,34 and 35 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,5-11,34 and 35 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

**DETAILED ACTION*****Requirement for Information - under 37 C.F.R 1.105***

1. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.
2. The information is required to identify products and services embodying the disclosed subject matter of Sacksaver (as seen in <http://www.sack-saver.com>) and identify the properties of similar products and services found in the prior art. The applicant's website with the products and services embodying the disclosed subject matter seemed to be available as early as October 13 2002. The examiner enclosed a snapshot of the website with drawing that is very similar to the drawing submitted by the applicant as part of the original disclosure. The examiner would also like to note the applicant website seems to allow member of the public to obtain a demo version and/or obtain use the game sack saver game (see website snapshot page 3 and 5). As such, the examiner would like to compare the sack-saver demo and available game that is associated with applicant's website marked on October 13, 2002 until March 31 2003.
3. In response to this requirement, please provide copies of each publication which any of the applicants authored or co-authored and which describe the disclosed subject matter the teaching of bagging a grocery bag or related activities.
4. In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated in the requirement, or where such subject matter is not indicated, the subject matter found in applicant's disclosure.
5. The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within

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the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

6. The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained may be accepted as a complete reply to the requirement for that item.

7. This Office action has an attached requirement for information under 37 CFR 1.105. A complete reply to this Office action must include a complete reply to the attached requirement for information. The time period for reply to the attached requirement coincides with the time period for reply to this Office action.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1, 5-11 and 34-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "a special characteristic" in claim 1, 5-11 and 34-35 is a relative term which renders the claim indefinite. The term "a special characteristic" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. **Claims 1, 5, 8-9, 11 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckenwille US 2003/0163292 in view of Sack Saver and further in view of Yamamoto US 5, 265,888.**

**Claim 1:** The Eckenwille reference provides a teaching of a method to train a user to pack a retail carrier bag comprising of: providing logic in a computer to evaluate whether a plurality of virtual retail carrier bags having been properly packed with a plurality of virtual purchased item (see paragraph 57 and FIG 17 "efficiency") said logic include packing criteria each virtual item having a specification including weight and dimension (see paragraph 24-25), representing plurality of different purchased item serially (see FIG 5 and see FIG 1 item 16 and paragraph 37 and paragraph 48-50); moving said plurality of virtual purchased item one at time within said computer in accordance with signals generated by said user (see FIG 3-5); evaluating in said computer how closely the packing of said plurality of virtual purchased item into said plurality of container conforms to said packing criteria (see paragraph 57 and FIG 17) and providing feedback to the user (see FIG 17 "efficiency").

The Eckenwile reference do not provide a teaching displaying a retail carrier bag, presenting a virtual retail carrier bag and moving virtual item into a plurality of carrier bag and the Eckenwille reference do not explicitly teaches that the items are presented in a random order.

The Eckenwille reference do not provide a teaching of different simulated grocery item, instead the Eckenwille reference provides a teaching where part. The examiner takes the

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position that main difference between the Eckenniller reference and claimed invention in this particular case is the visual graphics that user sees. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to change the display graphics to display either things that can be interpreted as part or groceries, because Applicant has not disclosed that displaying specific graphic provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected both graphics, to perform equally well with either the graphic display because both picture the same function of visualizing the item to be packed with the container. Therefore, it would have been *prima facie* obvious to modify Eckenniller to obtain the invention as specified in claim 1 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Eckenniller.

The Yamamoto reference provides a teaching of presenting item in computer in a random order (see Abstract). Therefore, to provide a software that presented item in random order would have been obvious to one of ordinary skilled in the art, in view the teaching of Yamamoto, since all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods (re-programming) with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art at the time of the invention, i.e., one skilled in the art would have recognized that the random presentation used in Yamamoto would the item presentation of Eckenniller to provide a solution from different item input presentation order.

The Sack Saver reference provides a teaching of displaying a retail carrier bag, presenting a virtual carrier bag (see Sack Saver reference FIG item 3). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of a retail carrier bag, in order to provide a simulation of different retail environment.

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**Claim 5:** The Eckenwiller reference provides a teaching of having packing criteria that includes the number of item packed in each container (see paragraph 25 and 57).

**Claim 8:** The Eckenwiller reference provides a teaching of feedback that includes the weight distribution among said plurality in each container (see FIG 17 "weight").

**Claim 9:** The Eckenwiller reference provides a teaching of a feed that include the number of virtual purchased item in each container (see FIG 17 "#Parts").

**Claim 11 and 35:** The Eckenwiller reference provides a teaching of a step of recording said feedback in a database accessible to an administrator through a computer network (see paragraph 38).

12. **Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckenwiller US 2003/0163292 in view of Sack Saver, in view of Yamamoto US 5, 265,888 and further in view of Chowdury US 6,876,958.**

**Claim 6-7:** Eckenwiler does not provide a teaching where the quantifying comprises of determining that a crushable one of the items in one of the organized state is in a lower position within the carrier (Claim 6, 17 and 28) or determining the breakable one of the item in one organized state is in a lower corner position within the carrier (Claim 7, 18 and 29).

However, Chowdury provides a teaching where the quantifying is determined by the determining the fragile item be placed in a certain position in the container (see Chowdury col. 9:14-31). Therefore, it would have been obvious for one of ordinary skilled in the art to include the feature of quantifying by the determining the fragile item be placed in a certain position in the container, as taught by Chowdury, because it would help the user be able to take into account possible damage (see Chowdury see 9:15-20).

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13. **Claims 10 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckenwiller US 2003/0163292 in view of Sack Saver, in view of Yamamoto US 5, 265,888 and further in view of Armington US 2001/0017023.**

**Claim 10:** The Eckenwiller reference provides a teaching of feedback that includes the total time taken by said user to pack all said purchased item into said plurality of virtual retail bags. However, the Armington reference provides a teaching of feedback that includes the total time taken by said user to pack all said purchased item into said plurality of virtual retail bags (see paragraph 75). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of feedback that includes the total time taken by said user to pack all said purchased item into said plurality of virtual retail bags, as taught by Armington, since it would allow the trainer to measure the efficiency of the student.

**Claim 34:** The Eckenwiller reference provides a teaching of a GUI of a bag item and bag weight indicator (see FIG. 17), providing a computer linked means for a said person to manipulate said cursor (see FIG 1 item 12), providing specification for each different item, including weight and dimension (see paragraph 24-25), tracking a number of parameter for each training run including total weight of item and placed in each bag and whether each item were properly placed in said bag (see FIG 17 item "weight", "#parts", "Efficiency"), simulating movement of said purchased item said purchased item being presented serially (see paragraph 27 item 42). Reporting this parameter to said person (see paragraph 38) and calculating a score for each run (see FIG 17 "efficiency").

The Eckenwiller reference fails to provide a teaching of providing a computer generated GUI of a packing station; a simulation of plurality of different purchased item; a simulation of at least one packing bag; a simulation of at least one packing platform; a simulation of a conveyor belt traveling toward said packing station; an item vertical and horizontal rotate button; a new bag button; simulation of a grocery cart; allowing said person to rotate said purchased item, if necessary by clicking one or both of said rotate button with cursor; allowing

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said person to place at least one bag on said packing station by clicking on new bag button.

The Sack Saver reference provides a teaching of a method of training of a person in the art of packaging purchased item comprising the step of: providing a computer generated GUI of a packing station (see Sack Saver item 6); a simulation of plurality of different purchased item (see Sack Saver item 1); a simulation of at least one packing bag (see Sack Saver item 3); a simulation of at least one packing platform (see Sack Saver item 6); a simulation of a conveyor bolt traveling toward said packing station (see Sack Saver item 1); an item vertical and horizontal rotate button (see Sack Saver item 4); a new bag button (see Sack Saver item 2); simulation of a grocery cart (see Sack Saver item 6); allowing said person to rotate said purchased item, if necessary by clicking one or both of said rotate button with cursor (see Sack Saver item 4); allowing said person to place at least one bag on said packing station by clicking on new bag button (see Sack Saver item 2). Therefore, it would have been obvious to one of ordinary skilled in the feature of providing a computer generated GUI of a packing station; a simulation of plurality of different purchased item; a simulation of at least one packing bag; a simulation of at least one packing platform; a simulation of a conveyor bolt traveling toward said packing station; an item vertical and horizontal rotate button; a new bag button; simulation of a grocery cart; allowing said person to rotate said purchased item, if necessary by clicking one or both of said rotate button with cursor; allowing said person to place at least one bag on said packing station by clicking on new bag button; as taught by Sack Saver.

The Eckewiller reference provides a teaching of feedback that includes the total time taken by said user to pack all said purchased item into said plurality of virtual retail bags.

However, the Armington reference provides a teaching of feedback that includes the total time taken by said user to pack all said purchased item into said plurality of virtual retail bags (see paragraph 75). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of feedback that includes the total time taken by said user to pack all said

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purchased item into said plurality of virtual retail bags, as taught by Armington, since it would allow the trainer to measure the efficiency of the student.

The Eckenwiller reference do not provide a teaching of different simulated grocery item, instead the Eckenwiller reference provides a teaching where of part. The examiner takes the position that main difference between the Eckenwiller reference and claimed invention in this particular case is the visual graphics that user sees. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to change the display graphics to display either things that can be interpreted as part or groceries, because Applicant has not disclosed that displaying specific graphic provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected both graphics, to perform equally well with either the graphic display because both picture the same function of visualizing the item to be packed with the container. Therefore, it would have been *prima facie* obvious to modify Eckenwiller to obtain the invention as specified in claim 1 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Eckenwiller.

The examiner takes OFFICIAL NOTICE on the feature of done button, allowing said person that has finished packing all purchased item by clicking the done button, providing linking mean for said person to manipulate said cursor (input device) and cursor as being old and well known in the art of graphical user interface. Therefore it would have been obvious to one of ordinary skilled in the art to include the feature of done button and cursor because it would enable the user to provide game input information to the system.

### ***Response to Arguments***

14. Applicant's amendments are sufficient to overcome the rejection under 35 U.S.C 101; as such the rejection on claim 1, 5-11 and 34-35 have been withdrawn.

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15. With respect to applicant argument claims 1, 5-11 and 34-35 the applicant argue that the definition of the word "special characteristic" can be found in page 12 lines 5-8. However, the cited section only mentions that the special characteristic can be modified to be "any special characteristic". As such the examiner can not determine the metes and bound of the limitation of "special characteristic"

16. With respect to applicant's argument that the Eckenwiller fails to provide a teaching of presenting different item and serially. The examiner respectfully disagrees. The Eckenwiller reference provides a teaching of different item (see FIG 1 item 16 and paragraph 37). With respect to item presented serially, the examiner interprets this limitation to mean that the item is presented one at a time. The Eckenwiller reference provides a teaching where the items are presented one at a time (see paragraph 27 item 42).

17. With applicant's argument that grocery bags would be of little use or no use in the system described by Eckenwiller. The examiner respectfully disagrees. The Eckenwiller reference already set forth a teaching of a database with different packing container (see paragraph 18-19). The examiner takes the position modeling a grocery bag would only serve to add to the completeness of such database.

18. With respect the applicant argument of different purchased grocery item; the argument is considered. New ground of rejection and rationale has been applied.

19. With respect to applicant's argument of the combination of Chowdury, Eckenwiller, Sack Saver and Yamamoto; the applicant argues that the comprises of determining that a crushable one of the items in one of the organized state is in a lower position within the carrier determining the breakable one of the item in one organized state is in a lower corner position within the carrier. The applicant argues that the Chowdury reference do not determine where the fragile and breakable item should be placed. The examiner respectfully disagrees. The section cited described a relative position of an item within a container. The examiner takes the position that such description is similar to the limitation of determining that a crushable

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one of the items in one of the organized state is in a lower position within the carrier determining the breakable one of the item in one organized state is in a lower corner position within the carrier.

20. With respect to applicant's argument that the combination of Armington, Eckewiller, Sack Saver and Yamamoto is not valid since the Armington reference information that is not used in applicant's invention such as: dunnage or cushioning material. The examiner would like to note that the inclusions of such feature are not suggested by the examiner. Furthermore, claim 10 and 34 are listed under an open ended transitional phrase of comprising. The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps (see MPEP 2111.03).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. UTAMA whose telephone number is (571)272-1676. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571)272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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